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IN THE

Supreme Court of the United States

October Term, 1969
No. 768

THE BOYS MARKETS, INC.,
Petitioner,

vs.

RETAIL CLERK'S UNION, LOCAL 770,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR THE PETITIONER.

Opinion Below.

The opinion of the Court of Appeals for the Ninth Circuit (App. 96) is reported at 416 F. 2d 368.

Jurisdiction.

The judgment of the Court of Appeals for the Ninth Circuit was entered on September 26, 1969 (App. 95). Petition for Writ of Certiorari was filed October 24, 1969, and was granted January 12, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Question Presented.

Whether the United States District Courts have jurisdiction under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C., Section 185, to enjoin strikes and work stoppages by labor organizations in violation of the promises contained in their labor agreements with employers not to engage in strikes or work stoppages during the term of the agreement and to submit all disputes and grievances to arbitration.

Whether Section 4 of the Norris-LaGuardia Act, 29 U.S.C., Section 104, should be held not to bar the issuance of such injunctions but should be accommodated with Section 301.

Whether the United States District Courts are compelled, after removal of an action from a State Court in which an injunction was granted against a labor organization, to dissolve such injunction because of the command of Section 4 of the Norris-LaGuardia Act.

Whether the decision of this Court in *Sinclair Refining Co. v. Samuel M. Atkinson*, 370 U.S. 195 (1962), should be overturned.

Statutes Involved.

The statutory provisions involved are Section 1 and Section 301 of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U.S.C. 151 and 185, and Sections 2, 4, 13(c) and 13(d) of the Norris-LaGuardia Act of 1932, 42 Stat. 70, 29 U.S.C. 102, 104, 113(c) and 113(d). The statutory provisions are printed in the Appendix to this brief.

Statement.

This case arises out of a strike by Respondent Union against one of Petitioner's retail supermarkets in breach of a "no-strike" contract. Petitioner obtained a temporary restraining order from the California State Court. The Union removed the action to the Federal District Court and moved to quash the restraining order. The District Court below denied the motion to quash and granted Petitioner's motion for an order compelling arbitration and for an injunction against the strike pending such arbitration. On appeal, the Court of Appeals reversed the District Court's order enjoining the strike and remanded the case for further proceedings.

The Employer, Petitioner herein, is a California corporation operating a chain of retail food supermarkets in and about the County of Los Angeles, California. The Union, Respondent herein, is a labor organization which represents the retail clerks employed by the Employer in its retail food supermarkets (App. 4-6). The events giving rise to this action took place at one of the Employer's supermarkets which is located in Cudahy, California.

The Employer and the Union at the time of the events in question were parties to a collective bargaining contract, in writing, known as the "Retail Food, Bakery, Candy and General Merchandise Agreement, April 1, 1964-March 31, 1969". This contract provided for the wages, hours, benefits and working conditions for the Employer's retail clerks and required arbitration of "any and all matters of controversy, dispute or disagreement of any kind or character existing between the

parties and arising out of or in any way involving the interpretation or application of the terms of this Agreement * * *" (App. 7).

In consideration of the agreement by the Employer to arbitrate disputes between the parties, the Union agreed that matters subject to the procedures set forth in the arbitration provisions "* * * shall be settled and resolved in the manner provided herein", and that "During the term of this Agreement, there shall be no cessation or stoppage of work, lock-out, picketing or boycotts, * * *" (App. 6).

On Tuesday, February 18, 1969, the Union objected to the use of non-bargaining unit employees by the Employer to relocate merchandise in frozen food cases of the Cudahy store and demanded that the Employer remove all of the merchandise from these frozen food cases, take it to the freezer in the back of the store and then have the cases restocked by retail clerks who were members of the Union. The Union representative told the Employer's frozen food supervisor that unless this action was taken as demanded by the Union, the Union "would pull the crew and commence picketing the store" (App. 33). The Employer refused to agree to these demands, and the Union's representative "* * * went through the store and told all the retail clerks to lock up and leave the store." (App. 34). All of the retail store employees left their employment. Agents of the Union stationed themselves on the sidewalk in front of the store and commenced telling customers that the store was "closed" and that there was "no service" in the store. Seven of the Union's agents began picketing the entrances to the store carrying signs which read, "LOCAL 770 — THIS STORE ON

STRIKE — PLEASE RESPECT OUR PICKET LINES" (App. 34).

The Employer's store suffered a substantial loss of business during the period of the picketing (App. 35), and the Employer estimated its damage at not less than $5,000.00 per day (App. 11).

The President of Food Employers Council, Inc., representing the Employer, immediately sent a telegram to the Union advising the Union of the existence of a dispute involving the interpretation and application of the labor agreement; demanding that the strike, work stoppage and picketing in violation of the contract be halted; and invoking the grievance and arbitration procedure required under the contract (App. 30). The Union continued the work stoppage and picketing.

On February 19, 1969, the Employer filed a Complaint for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and for Specific Performance of Agreement to Arbitrate with the California Superior Court, County of Los Angeles, and made application for an Order to Show Cause and Temporary Restraining Order (App. 4). This application was granted by the State Court (App. 36). The Union was enjoined, pending a hearing on the Order to Show Cause, from picketing, engaging in a strike or concerted work stoppage and from inducing employees to engage in a strike or work stoppage or to refuse to perform their services for the employer.

The Union promptly removed the action to the United States District Court for the Central District of California and filed a Motion to Quash the State Court's Temporary Restraining Order (App. 42; 47). In op-

position, the Employer filed a Motion for Order Compelling Arbitration; For Order Requiring Specific Performance of Agreement to Arbitrate; and Application for Preliminary Injunction (App. 50).

On March 12, 1969, the District Court denied the Union's Motion to Quash the State Court injunction and granted the Employer an Order Compelling Arbitration and Order for Injunction (App. 74; 84). Finding that the dispute was required to be submitted to arbitration under the labor agreement between the Employer and the Union and that the strike and work stoppage was in violation of that contract, the Court ordered the parties to arbitrate the underlying dispute and enjoined the Union from picketing; carrying signs stating that employees were on strike; engaging in a strike or work stoppage; inducing employees to engage in a strike or work stoppage or inducing employees to refuse to perform their services.

Upon appeal filed by the Union, the Court of Appeals for the Ninth Circuit reversed the order of the District Court granting an injunction against the Union and remanded the case for further proceedings. In its decision, the Court of Appeals, with due regard for the factual similarity between this case and *Sinclair v. Atkinson*, held that it was "bound by the holding of *Sinclair*". (App. 96; 98).

Summary of Argument.

Sinclair v. Atkinson, 370 U.S. 195 (1962), which held that Section 4 of the Norris-LaGuardia Act prohibited the District Courts from enjoining strikes in breach of collective bargaining agreements, must be overruled in order to maintain equal enforceability of

labor agreements by employers and labor organizations and to preserve the harmony of the federal law of labor relations. The Supreme Court decisions which have followed *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), have consistently emphasized that the national labor policy is best effectuated by contracts which substitute arbitration for the economic strike and which contain a covenant not to strike as a *quid pro quo* for the promise to resolve disputes by arbitration and for the wages and benefits agreed upon.

The federal labor policy which has been developed under the *Lincoln Mills* doctrine has placed heavy emphasis upon the substitution of arbitration of disputes for industrial warfare. The prohibition against granting equitable relief in strikes over disputes subject to arbitration is a serious flaw in present labor relations law. An injunction is the only effective means of enforcing no-strike pledges. Without injunctive relief, the promise not to strike becomes, as a practical matter, meaningless.

Since the decision in *Avco Corp. v. Aero Lodge 735, I.A.M.*, 390 U.S. 557 (1968) little is left of any significant remedy for employers confronted with strikes in breach of contract. State Court injunctions will very likely be effective only until the case is removed to the Federal Courts.

The *Sinclair* case is an anomalous decision, incorrectly interpreting the will of Congress as expressed in Section 301 of the Labor-Management Relations Act of 1947, and unnecessarily invoking the prohibitions of the Norris-LaGuardia Act, a 1932 enactment which has become an anachronism in the law. A review

of the legislative history makes clear the Congressional concern regarding the necessity for providing for enforceability of labor agreements. This history, however, is cloudy and imperfect upon the question of the intent of Congress regarding the equitable powers of Courts under Section 301. Upon re-examination, it cannot be said with assurance that Congress intended only to grant the Federal Courts the power to hear damage actions but to withhold by reason of the Norris-LaGuardia Act the power to enjoin strikes in breach of contract. This legislative history should not be considered as conclusive upon the issue.

The Norris-LaGuardia Act has been accommodated by the Courts with the anti-trust laws and with the Railway Labor Act. Section 4 of the Norris-LaGuardia Act should be interlaced with Section 301 of the Labor-Management Relations Act of 1947 so that injunctions, which are the only effective means of prevention of strikes and work stoppages in violation of labor agreements, may be granted by the Federal Courts just as agreements to arbitrate may be enforced by orders for specific performance, thus achieving equality and mutuality of remedy.

On balance, it is submitted that fundamental considerations of law and policy require that *Sinclair* be overturned. The result will provide the Federal Courts with the ability to fairly impose remedies necessary to insure the mutual enforceability of collective bargaining agreements and, thus, promote industrial peace.

ARGUMENT.

I.

Sinclair v. Atkinson Is a Judicial Barrier to the Effective Enforcement of No-Strike Provisions of Labor Agreements and, Being Out of Harmony With the Federal Law of Labor Relations, Should Be Overruled.

Once again this Honorable Court has before it the question of the scope and reach of Section 301 of the Taft-Hartley Act and the applicability of Section 4 of the Norris-LaGuardia Act to injunction proceedings arising out of suits for violation of collective bargaining agreements between employers and labor organizations. Squarely at issue is the power of the Federal Courts to enjoin breaches by labor organizations of the "no-strike" provisions of their agreements with employers and, correlatively, the question whether the Federal Courts must, by reason of the prohibitions of the Norris-LaGuardia Act, dissolve any State Court injunction in an action which has been removed to the Federal Courts under the provisions of the Removal Act.

There is little difference of significance between the facts of this case and those before the Court in *Sinclair Refining Company v. Samuel M. Atkinson*, 370 U.S. 195. Perhaps the only difference worthy of passing note is the fact that when confronted with a strike and work stoppage in breach of the contract by the Union, the Employer first obtained injunctive relief from the State Court; whereas, in *Sinclair*, the plaintiff-employer first sought relief in the Federal Court. This State Court action was promptly removed to the Federal District Court which, in turn, denied the Union's motion

to quash the State Court injunction and issued its own injunction, coupled with an order compelling the parties to arbitrate.

The Norris-LaGuardia Act was adopted by Congress in 1932 in response to the use of the injunctive powers of the Federal Courts to thwart organizing efforts of unions. The principal purposes sought to be accomplished by the Norris-LaGuardia Act were to outlaw "yellow dog" contracts and to prohibit the use of injunctions as a weapon against labor's efforts to organize employees. In 1935, Congress enacted the original Wagner Act[1] and, a little more than a decade later, adopted the Labor-Management Relations Act of 1947.[2]

The 1947 Act regulated the relationships between employer, employee and labor organizations. Section 301 of that Act granted jurisdiction to the Federal Courts of suits for violation of contract between an employer and a labor organization representing employees in industry affecting commerce.

The enactment of Section 301 inevitably posed the vexing problems of interpretation which have occupied the Courts for over two decades. In *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 75 S. Ct. 489 (1955), this Court rejected the argument that Section 301 empowered the Federal Courts to fashion a federal law of labor relations and held that state law was the applicable substantive law to be applied to collective bargaining agreements.

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[1] 49 Stat. 449.

[2] 67 Stat. 136, 29 U.S.C. 151, *et seq.*

Westinghouse was but short-lived. Two years later, in 1957, *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 77 S. Ct. 912, was decided. In this case, Section 301 was again examined, and the Court held that Congress had empowered the Federal Courts to compel specific performance of an arbitration agreement and that the Courts were empowered to fashion a body of federal law for the enforcement of labor agreements between employers and unions. Predictably, *Lincoln Mills* gave rise to extensive litigation upon critical legal issues inevitably generated by that decision. The crucial questions of the enforceability of arbitration provisions contained in labor agreements and of the awards of arbitrators were before the Court in the series of cases now popularly known as the "trilogy".[3]

It is fair to say that in these decisions the Court placed heavy emphasis upon the substitution of arbitration for industrial warfare as the "kingpin" of federal labor policy. Doubts were to be resolved in favor of arbitration, and the Courts were not to substitute their judgment for that of the arbitrator.

Extending the philosophy underlying *Lincoln Mills*, the Court later held that Section 301 did not divest the State Courts of jurisdiction over suits for violation of labor agreements and thus established the principle of concurrent jurisdiction.[4] In the same term, the Court

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[3] *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574; 80 S. Ct. 1347 (1960); *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564; 80 S. Ct. 1343; *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593; 80 S. Ct. 1358.

[4] *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 82 S. Ct. 519 (1962).

held that in a State Court action by an employer against a union for damages resulting from a strike, federal law was applicable and controlling over any incompatible principles of local law.[5] In this same case, the Court also held that the policy favoring the promotion of the arbitral process as a substitute for economic warfare was so important that an agreement not to strike would be implied to the extent that the parties had agreed to arbitrate disputes, even though no express no-strike clause existed.

The dominant theme of the decisions of this Court since *Lincoln Mills* has been the promotion of industrial stability through the collective bargaining agreement. The Court has sought to substitute arbitration fore industrial strife and has acknowledged that:

> "Complete effectuation of the federal policy is achieved when the agreement contains both an arbitration provision for all unresolved grievances and an absolute prohibition of strikes, the arbitration agreement being the 'quid pro quo' for the agreement not to strike."[6]

The development of a complete federal law of labor relations, with mutuality and equality of enforceability of the provisions of labor agreements, was seriously hampered by this Court's decision in *Sinclair Refining Company v. Samuel M. Atkinson,* 370 U.S. 195, 82 S. Ct. 1328 (1962). The results reached in *Sinclair* could not have been forecast from the majority opinion

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[5]*Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.,* 369 U.S. 95, 82 S. Ct. 571 (1962).

[6]*United Steelworkers of America v. Warrior & Gulf Nav. Co.,* 363 U.S. 574, 578, Fn. 4; 80 S. Ct. 1347 (1960).

in *Lincoln Mills* which, although not addressing itself to the question, seemed to infer that labor agreements should be enforceable, both in law and in equity. Despite clear indications in the *Lincoln Mills* decision that the Court there had in mind the necessity of an effective method of assuring freedom from economic warfare during the term of the contract; despite a clear statement that Section 301 expressed a federal policy that Federal Courts should enforce labor agreements so as to obtain industrial peace; and, finally, despite the holding in *Lincoln Mills* that jurisdiction to compel arbitration of disputes was not restricted or impeded by Section 7 of Norris-LaGuardia, the Court in *Sinclair* held that the action involved a "labor dispute" within the meaning of the Norris-LaGuardia Act, and that inasmuch as Congress, in enacting Section 301, had not repealed Norris-LaGuardia, the Federal Courts were prohibited from enjoining strikes in breach of contract.

The courts of the several states have been the traditional forum for the litigation of disputes between employers and unions over the interpretation or application of their contracts. *Sinclair* insured that all applications for injunctive relief were made to State Courts. The impact of Norris-LaGuardia upon the powers of Federal Courts under Section 301 after removal of State Court actions was to linger unresolved.

This Court's decision in *Avco*[7] resolved the basic issue concerning federal jurisdiction after removal of a State Court action. Specifically left unresolved, however, were two related questions: Whether *Sinclair*

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[7] *Avco Corp. v. Aero Lodge 735, I.A.M.*, 390 U.S. 557, 88 S. Ct. 1235 (1968).

required dissolution of a removed State Court injunction, and whether remedies available in State Courts are limited to the remedies available under federal law.[8] Quite obviously, should *Sinclair* now be held to have been wrongly decided, not only will the fundamental question of the equitable powers of a Federal Court under Section 301 be redetermined but also settled will be the issue of the powers of such Courts in removed State Court actions, as well as the effect of Section 301 upon the powers of State Courts.

In the present case, the District Court not only denied a motion to quash the State Court injunction, but it also took the ultimate step of issuing its own injunctive order against the Union. The result is that the present case must be considered as though the action had been initially filed in the District Court and, therefore, directly raises the root question of the continuing validity of *Sinclair*. A removed State Court injunction action will often raise the same question. The reason is that many such actions are removed during the pendency of a temporary restraining order which ordinarily will have a very limited life. Under California law, for example, after a temporary restraining order issues, a hearing must be held within not less than fifteen days to determine whether or not a preliminary injunction should issue.[9]

Consequently, very shortly after removal, even in the absence of a motion to quash, the employer will necessarily be required to apply for further injunctive relief from the Federal Court in order to prevent resumption of a strike.

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[8]390 U.S. 557, 561, Fn. 4.

[9]California Code of Civil Procedure, Section 527.

An injunction is the only effective means of enforcement of a no-strike clause in a collective bargaining agreement.

> "* * * About all an employer can get in exchange for his commitments in a collective agreement is continued production—no work stoppages for the life of the agreement."[10]
>
> "A strike in breach of contract irreparably harms the employer. Orders are lost. Customers transfer their favor to employers who meet deadlines. The discharge of strike leaders does not end the strike; at best, it stops further efforts. A damage action tried years later to the vagaries of a jury is small recompense to the employer denied business because he cannot deliver. Equitable relief is not only the most appropriate remedy but also the most effective one. The order of the court compelling the union to refrain from engaging in a work stoppage in breach of contract has, as a practical matter, the effect of immediately ending the strike."[11]

The arbitration process is itself of little comfort to an employer who is confronted with a strike over a grievance that is subject to the arbitration procedure. Even though arbitration is perhaps a more expeditious reme-

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[10]Gregory, *The Collective Bargaining Agreement: Its Nature And Scope*, 1949, Wash. U.L.Q. 3, 12.

[11]Stewart, *No-Strike Clauses In The Federal Courts*, 59 Mich. L. Rev. 673, 674-675; See also, Comment, *Injunctive Relief Against A Union's Violation of a No-Strike Clause*, 52 Cornell L.Q. 132, 134; Cox, *Current Problems In the Law of Grievance Arbitration*, 30 Rocky Mtn. L. Rev. 247, 255, wherein Cox states that an employer cannot afford to further "exacerbate labor-management relations by suing a union made up of his employees after the end of the strike."

dy than a court action, it is, nevertheless, time-consuming. The Federal Mediation and Conciliation Service, in its 1968 annual report, stated that the average time between the date of request for a panel of arbitrators and the rendition of an award is 157.46 days.[12]

An employer, having reached agreement with the union upon the wages, benefits and conditions that are to be paid to the employees for the term of the contract, is most surely entitled to the one essential part of his bargain, namely, uninterrupted production. Unions must be required to settle the grievances and disputes that are certain to arise through the private arbitration process provided for under the agreement, and in the event that the contract is breached by the union, logic and reason clearly dictate that the employer should be entitled to the only effective remedy, court-imposed restraint of the work stoppage, thus preventing irreparable damage to the employer.

It has been said that *Sinclair* is out of harmony with *Lincoln Mills* and the landmark cases following that decision. Without doubt, it is out of harmony with the Congressional purpose in the enactment of the Taft-Hartley Act, as reflected in Senate Report No. 105:

> "If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation dur-

[12] 70 LRR 324.

ing the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract."[13]

The pointed reference to the need for "some effective method of assuring freedom from economic warfare" strongly impels the conclusion that Congress did not intend that employers be deprived of injunctive relief against strikes in breach of contract.

As we have said, the theme of the federal labor policy that has been fashioned since *Lincoln Mills* has forcefully emphasized over and again the importance of substituting the arbitral process for the strike and the necessity of mutual and equal enforceability of contract provisions.[14]

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[13]353 U.S. at 454; 77 S. Ct. at 916; 80th Congress, Senate Report No. 105 on S. 1126.

[14]"The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301(a) reflects Congressional recognition of the vital importance of assuring the enforceability of such agreements." *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509, 82 S. Ct. 519, 523 (1962). "A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement." "The grievance procedure is, in other words, a part of the continuous collective bargaining process. It, rather than a strike, is the terminal point of a disagreement." *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 578, 581, 80 S. Ct. 1347, 1350; 1352 (1960). Also, in deciding that a no-strike agreement should be implied in law even though not expressly stated where and to the extent an arbitration agreement exists, the Court said: "Even

(This footnote is continued on the next page)

The beacon that was lighted by *Lincoln Mills*—and extinguished by *Sinclair*—must be relit if federal labor policies are not to founder upon the reef of the Norris-LaGuardia Act. It is utterly incongruous that, under the federal law, employers and labor organizations are urged to enter into collective bargaining agreements under which industrial strife is to be replaced by a system of private, voluntary arbitration of contractual disputes; and that the law is best effected by enforcement of the spirit and intent underlying these contracts, if, nevertheless, the law denies employers their only meaningful remedy against strikes and work stoppages in violation of such agreements.

The compelling necessity for empowering Federal Courts to restrain breaches of the no-strike provisions of labor agreements is sharply underscored by the facts in this case. The Union and the Employer were parties to a comprehensive labor agreement which contained the promise of the Employer to arbitrate all disputes, and the covenant of the Union to refrain from strikes, work stoppages or picketing. Nevertheless, in clear violation of its contract, when the dispute arose over the stocking of the frozen food cases in the Cudahy store, the Union, dissatisfied with the Employer's refusal to accede to its demands, established a picket line and ordered the employees of the Employer to cease performing their duties. The store was emptied of customers and business virtually came to a halt for a day and a half. The Employer's loss of sales and its loss of

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more in point, a contrary view would be completely at odds with the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare." *Local 174, Teamsters, Etc. v. Lucas Flour Co.*, 369 U.S. 95, 105, 82 S. Ct. 571, 578 (1962).

customers can never be recovered nor can such loss even be determined. Who is to say how many angry or disappointed customers took their trade to the Employer's competitors, never to return?

The strike was halted only upon the issuance of a restraining order. There can be no doubt of the efficacy of this procedure nor of its equity.

Section 301, upon a literal reading, would appear to confer authority upon the Federal Courts to restrain strikes in breach of contract. Certainly, the unqualified use of the word "suits" strongly indicates that the full range of judicial remedies was intended to be made available for the adjudication of labor-management disputes. Since *Lincoln Mills,* there can be no doubt that Section 301 established substantive law which must be fashioned by the Federal Courts and which must be followed by State Courts. It is difficult to find reason or logic in the fact that the Courts are empowered under this Section to issue mandatory orders compelling parties to labor agreements to specifically perform their agreements to arbitrate; are to enforce the awards of arbitrators even though the Courts may disagree with the results; are to resolve all doubts in favor of arbitration; and, perhaps, may even enforce an arbitrator's award ordering a union to cease and desist from a strike;[15] but may not close the full circle of judicial remedies and restrain the most damaging act in breach of collective bargaining agreements.

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[15] *Philadelphia Marine Trade Assn. v. Int'l Longshoremen's Assn. Local 1291,* 365 F. 2d 295; 368 F. 2d 932, revs'd on other grds., 389 U.S. 64 (1967); *New Orleans S.S. Assn. v. General Longshore Workers, I.L.A.,* 389 F. 2d 369 (CA-5 1968), cert. den. 393 U.S. 828.

II.

The Legislative History of Section 301 Does Not Compel the Conclusion That Congress Intended Its Grant of Power to the Federal Courts to Be Restricted by the Earlier, Sweeping Prohibitions of the Norris-LaGuardia Act.

All of the arguments upon matters of policy and analogies drawn from lines of decisions which support Petitioner's position necessarily leave unanswered one single crucial question: Did the 80th Congress intend that the broad and sweeping prohibitions against injunctive relief contained in the Norris-LaGuardia Act should act as a limitation upon the exercise of equitable powers in suits for violation of collective bargaining agreements under Section 301? In short, was it the legislative purpose to deny the Federal judiciary power to enjoin strikes by unions in breach of their contracts with employers?

The question was quite forcefully answered in *Sinclair*. The majority agreed with lower court decisions which held that a strike in breach of a no-strike contract was a "labor dispute" within the meaning of the Norris-LaGuardia Act, and that the legislative history of Section 301 impelled the conclusion that Congress "deliberately chose" not to repeal the Norris-LaGuardia Act insofar as suits based upon breach of contract were concerned.[16] The argument that Congress intended to confer the power upon the courts to accommodate Nor-

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[16] 370 U.S. at 205.

ris-LaGuardia was rejected as "startling".[17] The Court's decision in *Chicago River* was distinguished, and the Court concluded that it was "its duty to give effect to the plainly expressed Congressional purpose with regard to the continued application of the anti-injunction provisions of the Norris-LaGuardia Act."[18]

Many legal scholars have disagreed. Professor Benjamin Aaron, for example, has said:

> "* * * Congress did not foresee the possibility of such a sharp conflict between the anti-injunction policy of Norris-LaGuardia and the policy in favor of specific enforcement of agreements to arbitrate which the Supreme Court subsequently read into Section 301. Consequently, one cannot see how Congress could have intended to preclude the possibility of injunctive relief against strikes for violation of such agreements. It would seem more reasonable to construe the ambiguous legislative history of section 301 as the dissenters did in the *Sinclair* case. The resulting accommodation of section 301 with section 4 of the Norris-LaGuardia Act seems no more tortuous and no less reasonable than the accommodation of Norris-LaGuardia which the Supreme Court effected in the *Chicago River* case."[19]

The opinion in *Sinclair* places considerable emphasis upon the fact that the original version of Section 301

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[17] 370 U.S. at 209.

[18] 370 U.S. at 213.

[19] Aaron, *The Labor Injunction Reappraised*, 10 U.C.L.A. L. Rev. 292, 342.

in the House bill declared Norris-LaGuardia to be inapplicable and to the fact that this provision was delected from the final measure. In this connection, another writer has observed that:

> "The legislative history of section 301, which shows that Congress refused to repeal the Norris-LaGuardia Act in contract litigation generally, is a history written without benefit of a full understanding of the ramifications of section 301. One should not draw as a negative inference from congressional failure to act the conclusion that Congress did not want the Court to deal rationally with section 301 and the Norris-LaGuardia Act where the two statutes intersect. Such a conclusion attributes more to Congress than its inaction properly can bear."[20]

The Norris-LaGuardia Act, adopted by Congress in 1932, was indeed a political response to the considerable use, and doubtless abuse, of the injunctive powers of the Federal Courts in the context of that turbulent period in the history of labor relations. These injunctions, often ill-advised, frequently issued *ex parte* upon the barest of evidence, and oft times reflecting the social philosophy of the judges, evoked massive criticism of the judiciary. At issue in this period was the basic question of the ability of labor organizations to organize employees and the right of employees to join unions.

It had become apparent that these restraining orders were a decisive element in the defeat of the organizational campaigns of the labor movement. Public opinion turned

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[20]Wellington and Albert, *Statutory Interpretation And The Political Process: A Comment On Sinclair v. Atkinson*, 72 Yale L. J. 1548, 1558.

against the courts, and the 1932 Anti-Injunction Act was the legislative response.[21]

The terms of the Act were broad and sweeping. Its object was to free labor of governmental intervention and to insulate the union efforts, from control by federal injunctions. The Act was intended to "protect, first, the right of free association, and, second, the right to advance the lawful object of the association."[22] The two principal purposes which it sought to accomplish were "to outlaw 'yellow dog' contracts and to prevent injunctions from being used as a method to discredit and handicap labor in contests with employers."[23]

The entire thrust of this legislation was to enable the labor movement to organize employees and to bargain with employers. It is entirely fair to say that Congress in the enactment of this legislation was not at all occupied with the problem of the regulation of the rights and relationships between employers and unions under a collective bargaining agreement—much less the legal interplay between agreements to arbitrate disputes and promises not to strike.[24] These questions were re-

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[21]See: Frankfurter and Greene, *The Labor Injunction;* Witte, *The Federal Anti-Injunction Act,* 16 Minn. L. R. 638; Gregory, *Labor And The Law.*

[22]H. Rep. No. 669, 72d Cong., 1st Sess. 10 (1932).

[23]Witte: *The Federal Anti-Injunction Act,* 16 Minn. L. Rev. 638, 654-655 (1932).

[24]"(Congress) did not intend to free unions from the one effective remedy after agreement was reached." Stuart, *No-Strike Clauses In the Federal Courts,* 59 Mich. L. R. 673, 677-678. "Thus the federal labor policy in 1932 with respect to injunctions clearly evidenced an intent by Congress to encourage and permit complete freedom of union organization without federal intervention, a new concept in the history of labor relations. This policy prohibited the issuance of injunctions based upon spurious alleged tortious conduct but it did not contemplate, reach or embrace activities or relations between a union and management

served for our era. The Norris-LaGuardia Act is of historical importance, but the majority of its provisions are today of little practical effect. The freedom to form and join unions and the right to bargain upon terms of employment have long since been brought within the protective provisions of the National Labor Relations Act. The yellow dog contract, were one ever to be found again, would have but a short life before the National Labor Relations Board.

Although the debates upon the Labor Relations Act in both the 79th and 80th Congress were by no means illuminating upon the issue before the Court, two conclusions may be drawn. Throughout these debates, the necessity for making collective bargaining agreements binding and enforceable against union and employer alike and the advisability of making unions suable in the Federal Courts were prime factors under consideration. Secondly, scant attention was devoted by Congress to consideration of the necessity for injunctive relief to enforce no-strike agreements and the potential conflict in this regard with Norris-LaGuardia.

It is true that Section 10 of the Case bill in the House[25] contained a provision that in the event of breach, "* * * in addition to any other remedy or remedies existing either in law or in equity, a suit for damages for such breach or for injunctive relief in equity * * *" may be brought in the Federal Courts.[26] This Section was modified by the elimination of the provision

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which followed the execution of a collective bargaining agreement." Marshall, *Federal Enforcement Of A No-Strike Clause By Injunctive Relief, Symposium* on Labor Relations Law (1961), Tulane Univ. Sch. of Law, Ralph Slovenko, Ed., Pg. 570.

[25]H. R. 4908, 79th Cong., 2d Sess.

[26]92 Cong. Rec. 765.

authorizing restraining orders with a comment by Mr. Case that it was thought that the bill met the situation by authorizing a suit for damages. The Senate amendment to the House bill was similar to Section 301, as eventually enacted, making no reference to injunctive relief. The minority report, however, makes it plain that the purpose of the amendment was to make contracts equally binding and enforceable; that the bill was intended to remedy the obstacle created by the difficulty of subjecting unions to legal process in the State Courts; and that the Norris-LaGuardia Act had insulated unions against liability for breach of contract.

In the 80th Congress, House bill, H. R. 3020, as reported, contained in Section 302 a provision that "any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees may be brought by either party in any district court of the United States * * *" and in Section (e) thereof, specifically provided that the Norris-LaGuardia Act "shall not have any application in respect of either party". Senate Bill S. 1126 contained a Section 301 which provided that:

> "Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

There was no clause providing for non-applicability of the Norris-LaGuardia Act.

Considerable enlightenment upon the intent of Congress may be found in Senate Report No. 105 on S. 1126. (1 Leg. Hist. 407) The Committee on Labor and Public Welfare determined that "The problem of the inadequacies of existing laws on industrial relations is one of grave concern". Reflecting upon experiences under the Norris-LaGuardia Act and the 1935 Wagner Act, the Committee concluded that to the extent that these statutes, the regulations issued thereunder and the decisions regarding them "* * * have produced specific types of injustices or clear inequities between employers and employees, Congress should remedy the situation by precise and carefully drawn legislation." Again, the Committee commented that:

> "The need for such legislation is urgent. Supreme Court interpretations of the Norris-LaGuardia Anti-injunction Act and the Clayton Act seemed to have placed union activities, no matter how destructive to the rights of the individual workers and employers who are conforming to the national labor relations act, beyond the pale of federal law."

Within the discussion contained in this report upon the enforcement of contract responsibilities, the Committee commented that:

> "The committee bill makes collective bargaining contracts equally binding and enforceable on both parties. In the judgment of the committee, breaches of collective agreement have become so numerous that it is not sufficient to allow the parties to invoke the process of the National Labor Relations

> Board when such breaches occur (as the bill proposed to do in Title I). We feel that the aggrieved party should also have a right of action in the Federal courts. Such a policy is completely in accordance with the purpose of the Wagner act which the Supreme Court declared was 'to compel employers to bargain collectively with their employees to the end that an employement contract binding on both parties should be made.' (*H. J. Heinz & Co.*, 311 U.S. 514)."

The Committee was troubled, as we have noted before, by the fact that:

> "If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations."

After discussing the difficulty in State Courts of bringing actions against unions as unincorporated associations and the divergency of laws among the States, the Committee took significant note of the fact that:

> "The Norris-LaGuardia Act has insulated labor unions, in the field of injunctions, against liability for breach of contract. It has been held by a Federal court that strikes, picketing or boycotting, when carried on in breach of a collective agreement, involve a 'labor dispute' under the act so as to make the activity not enjoyable (sic) without a showing of the requirements which condition the issuance of an injunction under the act. (*Wilson & Co. v. Birlin*, 105 F. 2d 948, C.C.A. 3)."

Section 301, as adopted, was contained in the conference report of the Senate and the House.[27] There

[27] H. Rep. No. 510, 80th Cong., 1st Sess.

was no discussion in the report or the debates upon the final draft that would in any way clearly indicate the final intention of the framers of this legislation. It is true that references may be found in earlier debates to the fact that Congress was authorizing Federal Courts to hear "damage" suits. These references are inconclusive and reflect little more than language used in the course of debate.

It is submitted that the legislative history cannot be said to force the conclusion that Congress really meant to continue the prohibitions of the Norris-LaGuardia Act in regard to actions brought under Section 301. On this precise point, the legislative history must be held to be cloudy and imperfect. It would seem that if such were the Congressional intent, the issue would such been reflected to a far greater extent in the congressional debates. The record is replete with discussions concerning the advisability of granting general jurisdiction to the Federal Courts. It is silent on the question of limitations upon the jurisdiction so granted.

On balance, however, four conclusions should be drawn: First, that Section 301, as well as other amendments, was an outgrowth of Congressional desire to provide effective remedies that would prevent strikes in breach of contract. Second, that Congress felt strongly that the Federal Courts must be made available as a forum in which unions could be sued for their transgressions without the common law problems of process that had insulated them from suits in so many States. Third, that Congress fully recognized that the Norris-LaGuardia Act, and court decisions thereunder, had completely insulated unions from effective remedies against strikes in breach of contracts. Fourth, that the primary

purpose, underlying all of the legislation, was to insure that collective bargaining agreements would be fully binding and equally enforceable.

Under *Sinclair*, coupled with *Avco*, no-strike clauses are virtually unenforceable and to a very real extent will become meaningless. The legislative history of Section 301 does not command this Court to apply the prohibitions of Norris-LaGuardia to suits brought in the Federal Courts for violation of contracts between employers and unions. The federal policy of labor relations cannot be effectuated unless *Sinclair* is overruled.

III.

Judicial Precedent Under the Anti-Trust Laws and the Railway Labor Act Support the Accommodation of Section 4 of the Norris-LaGuardia Act With Section 301 of the Labor Management Relations Act.

Precedents may be found in decisions under the anti-trust laws and under the Railway Labor Act, which strongly support the interlacing of the Norris-LaGuardia Act with Section 301. In 1941, the Court considered the impact of the Norris-LaGuardia Act upon the anti-trust laws of the United States. The question presented was whether the use of conventional, peaceful activities by a union in the course of a controversy with another labor organization, over certain jobs, constituted a violation of the Sherman Act. The government had indicted four officers of a carpenter's union alleging a criminal combination and conspiracy in violation of the anti-trust laws. In determining this issue, Mr. Justice Frankfurter, writing for the Court, *United States v. Hutcheson*, 312 U.S. 219; 61 S. Ct. 463

(1941), stated "* * * whether trade union conduct constitutes a violation of the Sherman law is to be determined only by reading of the Sherman law and Section 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct", and posed the question as follows: "Were then the acts charged against defendants prohibited or permited by these three interlacing statutes?" (312 U.S. at 231)

The Court characterized the statutes as practically and historically a series of enactments touching "* * * one of the most sensitive national problems," and then declared:

> "Such legislation must not be read in a spirit of multilating narrowness. On matters far less vital and far less interrelated we have had occasion to point out the importance of giving 'hospitable scope' to Congressional purpose even when meticulous words are lacking. Keifer & Keifer v. Reconstruction Finance Corporation, 306 U.S. 381, 391, 59 S.Ct. 516, 519, 83 L.Ed. 784, and authorities there cited. The appropriate way to read legislation in a situation like the one before us, was indicated by Mr. Justice Holmes on circuit: 'A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for courts to say: We see what you are driving at, but you have not said it,

and therefore we shall go on as before. Johnson v. United States, 1 Cir., 163 F. 30, 32, 18 L.R.A., N.S., 1194."[28]

Just as the Norris-LaGuardia Act impacts upon Section 301 of the National Labor Relations Act, so too it was inevitable that there would be a collision between Norris-LaGuardia and the Railway Labor Act. Under the Railway Labor Act, "minor" disputes between carriers and unions which involve the interpretation or application on their agreements are required to be adjudicated either by the National Railroad Adjustment Board or by other boards of adjustment established between the unions and the carriers.

The question of the power of the Federal Courts to grant injunctions enforcing compliance with the provisions of the Railway Labor Act arose in *Virginia Railway Company v. System Federation No. 40*, 300 U.S. 515, 57 S. Ct. 592 (1937). In this case the Court affirmed the issuance of a mandatory injunction by a District Court, requiring the carrier to bargain with the union. The Court held:

"It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of §2, Ninth, of the Railway Labor Act (45 U.S.C.A. §152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."[29]

In *Steele v. Louisville & N.R. Co.*, 323 U.S. 192; 65 S. Ct. 226 (1944), the Court affirmed the propriety

[28]312 U.S. at 235, 61 S. Ct. at 468.
[29]300 U.S. at 563, 57 S. Ct. at 607.

of injunctive relief to protect individual employees from discrimination by their recognized and certified collective bargaining representative, and in *Graham v. Brotherhood of Locomotive Fireman*, 338 U.S. 232; 70 S. Ct. 14 (1949), a case similar to the *Steele* case, the Court unanimously held that Norris-LaGuardia did not prohibit the federal courts from acting to compel compliance with the positive mandate of the Railway Labor Act.[30]

A striking parallel between the line of decisions accommodating the Norris-LaGuardia Act with the Railway Labor Act and the accommodation with Section 301 which is being urged upon the Court in this cause, may be found in *Brotherhood of Railway Trainmen v. Chicago River and Indiana Railway Company*, 353 U.S. 30; 77 S. Ct. 635 (1957). The reason for this parallel is the fact that, under the Railway Labor Act, "minor" disputes are first referred for settlement by negotiation or conference between the parties, but if they are unable to reach agreement the statute requires that the dispute be submitted to the National Railroad Adjustment Board. The Adjustment Board is a tribunal established by Congress to determine minor disputes and is a form of compulsory arbitration, similar in substantial respects to the system of arbitration established under labor agreements such as the one before the Court in this cause. In the *Chicago River* case, the carrier and the Brotherhood of Railroad Trainmen were involved in some 21 grievances, including claims for compensation and for reinstatement to employment in higher positions. The parties were unable to reach agreement and the carrier

[30] 338 U.S. at 237.

submitted the controversy to the Adjustment Board. The Brotherhood of Railroad Trainmen issued a strike call and upon application of the carrier a temporary restraining order was issued by a District Court. Shortly thereafter, the temporary restraining order was vacated by the Court, but upon an application to the Court of Appeals for the Seventh Circuit the order was reversed. A permanent injunction was then entered by the District Court.[81]

The Court affirmed the judgment of the Court of Appeals. With regard to the question of the effect of the Norris-LaGuardia Act upon the power of the Federal Courts to issue injunctions in labor disputes, the Court in *Chicago River* said:

> "We hold that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable."[82]

The anomalous position of *Sinclair v. Atkinson* is strongly emphasized by these decisions, accommodating and interlacing the Norris-LaGuardia Act with the anti-trust laws and Railway Labor Act. In this connec-

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[81]See: 229 F. 2d 926.

[82]353 U.S. 30, 40; 77 S. Ct. 635, 640. In support of its decision, the Supreme Court cited *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 72 S. Ct. 1022 (1952), wherein the Court held: "Our conclusion is that the district court has jurisdiction and power to issue necessary injunctive orders (to enforce compliance with the requirements to the Railway Labor Act) notwithstanding the provisions of the Norris-LaGuardia Act". See also: *Locomotive Engineers v. Missouri-Kansas-Topeka R.R. Co.*, (1960) 363 U.S. 528; *Locomotive Engineers v. Louisville & Nashville R.R. Co.*, (1963) 373 U.S. 33.

tion, it must be noted that the Court in *Lincoln Mills* specifically refused to apply the strict procedural requirements of Section 7 of the Norris-LaGuardia Act to its order compelling arbitration on the authority of the *Virginia Railroad Company* case and *Graham v. Brotherhood of Railroad Firemen.*

The issue before the Court upon this appeal was well-summarized by the then Professor Cox:

> "* * * There is much the same conflict between the Norris-LaGuardia Act's blanket restrictions and the policy of Section 301 as there was in the *Chicago River* case between the blanket restrictions of the Norris-LaGuardia Act and the obligation to submit grievances to the Adjustment Board. From the standpoint of practical labor relations the two situations are exact parallels. In the *Lincoln Mills* case, only Mr. Justice Frankfurter voiced the older view 'that judicial intervention is ill-suited to the special characteristics of the arbitration process in labor disputes'. The majority gave precedence to legal sanctions. While the inappositeness of Section 7 made that decision relatively easy, the case suggests that the Court may carry the accommodation a step farther and achieve the equality of remedy between employers and unions by enjoining strikes which violate an agreement to arbitrate. Such a ruling would require strong judicial creativity in the face of the plain meaning of Section 4; such a ruling is unlikely; but unless Congress acts it is the only way to eliminate an anachronistic incongruity between two statutes which ought to form a coherent whole.[33]

[33]Cox, *Current Problems In the Law Of Grievance Arbitration,* 30 Rocky Mtn. L. Rev. 247, 255-256.

It is submitted that *Sinclair* should no longer be followed, and that the rationale of the *Hutcheson* and *Chicago River* decisions should be adopted so that Section 4 of the Norris-LaGuardia Act is to be interlaced with Section 301, thus affirming the power of the Federal Courts to restrain violations of labor agreements.

IV.

The Norris-LaGuardia Act Should Not Be Held to Require Automatic Dissolution of Removed State Court Injunctions.

The question of the effect of the Norris-LaGuardia Act and the *Sinclair* decision upon the powers of the Federal District Courts in connection with injunctions issued by State Courts for breach of contract and thereafter removed to the Federal Courts was reserved by this Court in its decision in *Avco Corp. v. Aero Lodge 735, I.A.M.* In the present case the District Court below issued its own order granting injunctive relief against the union pending arbitration. Thus, this case does involve the central question of the fundamental power of the District Courts under Section 301, and only correlatively touches upon the effect of that Section on removed injunction actions. The matter has been briefed with this fact in mind.

Petitioner has granted consent to the filing of certain *amicus curiae* briefs. It is our understanding that some of the *amici* are involved in cases in which District Courts, under the authority of *Sinclair*, granted motions to dissolve State Court injunctions in actions which had been removed to the Federal Courts. It is Petitioner's understanding that the briefs of such *amici* will fully cover this point.

Conclusion.

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be reversed with instructions to affirm the order of the District Court granting injunction pending arbitration.

February 17, 1970.

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APPENDIX.

1. The relevant provisions of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. 185, are as follows:

§ 151. *Findings and declaration of policy*

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their

employment or other mutual aid or protection. July 5, 1935, c. 372, § 1, 49 Stat. 449; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 136.

§ 185. *Suits by and against labor organizations—Venue, amount, and citizenship*

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organzation as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The sevice of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

2. The relevant provisions of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. 101, et seq., are as follows:

Sec. 102. Public policy in labor matters declared

In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority

are defined and limited in such sections, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

Sec. 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dsipute (as these terms are herein defined)

from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organizations or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

Sec. 113. Definitions of terms and words used in chapter

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.